United Nations CAT/OP/DEU/2/Add.1

Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.: General
18 February 2014

Original: English

Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Report on the visit made by the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment for the purpose of providing advisory assistance to the national preventive mechanism of the Federal Republic of Germany

Addendum

Replies of the national preventive mechanism of the Federal Republic of Germany to the recommendations and requests for information made by the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in its report on its visit to Germany*, **

* The present document is being issued without formal editing.

** On 30 January 2014, the national preventive mechanism announced its decision to make public its replies to the Subcommittee. The present document is being issued in accordance with article 16, paragraph 2, of the Optional Protocol.

GE.14-40949

1440949

Please recycle

1. With reference to the recommendation of the Subcommittee (SPT) contained in paragraph 14 of the SPT visit report (CAT/OP/DEU/2), the Federal Agency and the Joint Commission perform both announced as well as unannounced visits. The decision whether to announce a visit is made on a case-by-case basis. Factors to be taken into account are the typical frequency of detentions in the facility, the aim of the visit and the added value of an announcement in a specific case (e.g. the possibility to talk to staff council representatives).

2. Preparation of visits always includes the analysis of the legal basis on which the facility functions. If systemic shortcomings, due to either legal rules or administrative practice, are uncovered during a visit, the National Agency issues recommendations which go beyond the situation in the specific facility. For instance, it has communicated its general reservation about detaining foreigners pending deportation to prisons or is currently investigating the use of video surveillance and peepholes.

3. With reference to the recommendation of the SPT contained in paragraph 19 of the SPT visit report, the National Agency is in constant dialogue with the Federal and State agencies concerned. While the Federal Agency is dealing only with three ministries, the Joint Commission has to maintain contacts with the competent ministries in each of the 16 Länder. To this end, it informs the pertinent person at the ministry after each visit about the provisional results of the visit. Experience has shown that this procedure facilitates ensuing discussions on implementation.

4. The Federal Agency and the Joint Commission are also in regular contact with the Conference of Ministers of Justice, the Federal Ministry of Justice and the Ministry of Justice of the hosting state of Hesse on operative issues concerning the National Agency's work. The Head of the Joint Commission has also met the authoritative head of department of a State Ministry of the Interior and agreed to present the Joint Commission's work at a future Conference of Ministers of the Interior. Similar contacts are envisaged with the Ministries for Social and Labour Affairs. The adoption of annual topics of special interest ensures prioritization and optimal use of its limited resources. In 2013, the National Agency chose detention pending deportation as the topic of special interest. Its visits to almost all detention facilities for foreigners pending deportation have enabled it to develop a list of proposals that are directed to the executive branch of all Länder in charge of the administration of these facilities, as well as to the Federal and Länder parliaments to serve as guidelines for the adoption or modification of laws on detention pending deportation. In addition, the Federal Agency has monitored deportation flights. Members of the Joint Commission and the Secretariat have also participated in conferences on the issue organized by the Council of Europe's national preventive mechanism (NPM) network or by German governmental and non-governmental organizations.

5. In 2014, the Joint Commission's topic of special interest is juveniles in detention.

6. With reference to the recommendation of the SPT contained in paragraph 21 of the SPT visit report, discussions have taken place with several visiting commissions for psychiatric institutions. The Joint Commission is considering resuming the exchange when more visits to this type of facility are on the agenda. Concerning homes for elderly people, as soon as members with specific knowledge from this area have been assigned to the Joint Commission, possibilities to cooperate with specific visiting mechanisms will be presumed. The Joint Commission will furthermore assess the possibility to start talks with commissions on children's homes.

7. With reference to the recommendation of the SPT contained in paragraph 23 of the SPT visit report, the National Agency prepared a strategic plan in the scope of the ongoing discussions with the Länder Ministries of Justice on the extension of the Joint Commission. This plan is continually updated and expanded. The subject ministries have informed all places of detention under their responsibility of the National Agency's rights and duties as

defined under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

8. Since 2013, the National Agency annually defines topics of special interest; the first one having been detention pending deportation and return flights. In the past year, the Joint Commission visited almost all facilities for detention pending deportation. The Federal Agency accompanied two collective return operations to the country of destination and monitored the boarding process of another individual measure. The joint visit of the Joint Commission and the SPT delegation to the department for foreigners pending deportation at Mannheim prison took place in the scope of this focus. The results of and conclusions to be drawn from these focal visits are presented in a special chapter of the Annual Report. Additionally, overarching issues such as video surveillance in detention are receiving special attention in the scope of specific investigations.

9. When checking detainee files and in interviews with detainees during visits, the National Agency verifies the reasons of detention and observance of legal safeguards. In order to render legal safeguards effective, the National Agency recommends, for instance, that the police provide information leaflets in major languages for detainees who do not speak German. Foreigners in detention pending deportation should be supported in contacting legal counsel. This may result in foreigners challenging return decisions before Courts, which also assess the danger of refoulement in the specific case.

10. With reference to the recommendation of the SPT contained in paragraph 25 of the SPT visit report, members are appointed by the Federal Ministries of Justice, Defence as well as the Interior or the Conference of Ministers of Justice; respectively. Current members give feedback to these decision-making bodies on their workload at the National Agency so as to enable them to better assess prospective members with regard to their availability. The Secretariat of the National Agency also forwards proposals for suitable candidates for the Joint Commission to the responsible Hessian Ministry of Justice.

11. With reference to the recommendation of the SPT contained in paragraph 27 of the SPT visit report, the National Agency already forwards proposals for suitable candidates for the Joint Commission to the Hessian Ministry of Justice. It also regularly communicates to the press that it is lacking members with specific knowledge of other areas than the judiciary and police.

12. With reference to the recommendation of the SPT contained in paragraph 29 of the SPT visit report, the National Agency is exploring the availability of external experts in covering specific areas. It could recently establish contact to specialists in the field of childcare and of juvenile arrest to accompany future visits to such facilities. The National Agency has to develop standards in other areas such as psychiatric or elderly peoples' care. This presupposes a more constant availability of a person with specific knowledge than could be provided by an external expert accompanying an individual visit. Furthermore, the Conference of Ministers of Justice has already decided to support the extension of the Joint Commission to improve the Commission's non-judicial expertise.

13. With reference to the recommendation of the SPT contained in paragraph 31 of the SPT visit report, the Federal Agency and the Joint Commission are in constant exchange via the common secretariat and at joint meetings which take place approximately four times annually. Common internal rules have been adopted and will be enforced in 2014. The secretariat has participated in conferences and trainings on issues such as medication in psychiatric settings or the use of force in care. The National Agency is constantly assessing whether more concentration on training must be applied.

14. The visiting practice developed by the National Agency since its beginning will gradually be put down in writing and constantly updated by the secretariat. Nevertheless,

operative guidelines should, in the view of the National Agency, be sufficiently flexible to maintain the ability to react to unforeseen circumstances.

15. With reference to the recommendation of the SPT contained in paragraph 33 of the SPT visit report, the State Treaty and the decree of the Federal Ministry of Justice both include references to the National Agency's rights under articles 19 and 20 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Its task is hence known to the authorities concerned. On several occasions, the National Agency has been asked for its opinion on draft legislation. It has hitherto though not been able to submit opinions due to lack of capacity. Under the current circumstances and where required, its strategy is to include into its visit reports, comments on legislative shortcomings. Abstract comments on draft or existing legislation may result from background research undertaken by the National Agency on different issues.

16. A modification in particular of the State Treaty would require an agreement of the 16 Länder Ministries of Justice and approval by all 16 Länder Parliaments. Taking into account that there are more straightforward ways to ensure better implementation of the National Agency in legislative processes, amendments to the basic texts do not appear practical at this stage.

17. With reference to the recommendation of the SPT contained in paragraph 35 of the SPT visit report, the general public can provide the National Agency with information through a variety of channels such as postal mail, telephone, fax, e-mail as well as the anonymous contact form on its homepage. The Agency frequently receives information from many sources; among them, mainly detainees and their family members but also journalists or interest groups. It, furthermore, proactively establishes contacts with many public agencies and non-governmental organizations and participates in conferences and meetings of different interest groups.

18. The National Agency has identified that publishing its visit reports only in its Annual Reports is a major limiting element to its public visibility. Due to the fact that up to a year may pass before a report is published, many visits go unnoticed by the press. So as to ensure a more timely notification, beginning 2014 the Agency will increase its public visibility mainly by making visit reports available to the public on its website together with the comments of the subject ministry.

19. The National Agency's corporate identity is currently being designed in cooperation with the University of Applied Sciences and Arts Hanover. Only through this innovative approach was the National Agency able to finance its new corporate design. The scope of this process will include the annual report, the website and information leaflets. There will be a version for detainees that will be translated into the most pertinent languages.

20. Annual reports are published in German and English and are sent to some 50 interest groups in Germany and abroad. The reports are also available through the National Agency's website. All past reports have been sent to the SPT in German and English. The National Agency is thus already complying with article 23 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

21. The National Agency maintains contacts with the relevant Federal and Länder Ministries and regularly meets their representatives. To improve implementation of its recommendations, it immediately informs the head of department about the provisional findings. Contacts are also maintained with other European NPMs through the Council of Europe's NPM network. Furthermore, the National Agency, with financial and operative support by the Federal Ministry of Justice, is organizing a first meeting of German-language NPMs to take place in Berlin in April 2014.•

22. With reference to the recommendation of the SPT contained in paragraph 37 of the SPT visit report, the Federal Government doubled the Federal Agency's members in May 2013. This is considered sufficient for the roughly 270 facilities, mainly police stations. The Government has also declared its position in increasing the federal share in the National Agency's funding. The Federal Agency maintains contacts with the Federal Parliament's Human Rights Committee.

23. The Länder Governments are currently discussing the issue of insufficient personnel and financial resources. The chairman of the Joint Commission has been in constant exchange with the Hessian State Secretary of Justice and has personally explained the urgency of the matter to the heads of department for execution of sanctions. The Conference of Ministers of Justice has contacted the Conferences of Ministers of the Interior and of Social and Labour Affairs to share the additional financial burden caused by an increase of the Joint Commission's members and funding. Both Conferences have informed the Conference of Ministers of Justice that they would support the increase of members. The funding remains to be decided. The Joint Commission maintains contact with the Conference of Ministers of Justice on the issue.

24. The National Agency rents its own offices in the same building as those of the Centre for Criminology. The Centre for Criminology provides human resources administration and accounts management, while the National Agency executes all preventive tasks in full independence and without any interference by third parties. Until now the National Agency has not been confronted with doubts about its independence due to its attachment to the Centre for Criminology.

25. With reference to the recommendation of the SPT contained in paragraph 39 of the SPT visit report, when planning a visit, the National Agency takes into account the size and type of the facility and correspondingly decides the size of the visiting team and the amount of time to spend on each visit.

26. With reference to the recommendation of the SPT contained in paragraph 41 of the SPT visit report, the National Agency already consults detainee files and other documentation on every visit. Access was almost always provided without restrictions and, if required, files were even sent to its offices by the authorities. Only once has there been a case where immediate access has been denied.

27. With reference to the recommendation of the SPT contained in paragraph 43 of the SPT visit report, see replies under recommendation contained in paragraph 37 of the visit report, above.

28. With reference to the recommendation of the SPT contained in paragraph 45 of the SPT visit report, see replies under recommendation contained in paragraph 14 of the visit report, above.

29. There are generally relatively few detention cases at the facilities to be visited by the Federal Agency. The number of detentions at army facilities has fallen sharply since the armed forces were transformed into a professional army. In fact, the Federal Agency has not met a single soldier under disciplinary arrest in the past five years. The Federal Police has only restricted competencies and hence detains relatively few people as well. Customs authorities only have 24 detention facilities. Given the limited probability in encountering persons in detention, the Federal Agency focuses more on learning about the attitudes of officials, the atmosphere among staff and detention-related training for officers. It, therefore, usually announces its visits to ensure that the facility director and representatives of the staff association are on site. However, for each visit it will continue to consider whether unannounced visits or visits outside usual office hours may produce more insight into the situation of detainees.

30. With reference to the recommendation of the SPT contained in paragraph 47 of the SPT visit report, see replies under recommendation contained in paragraph 37 of the visit report, above.

31. With reference to the recommendation of the SPT contained in paragraph 50 of the SPT visit report, in the scope of its limited possibilities, the National Agency is covering the broadest possible scope of facilities. It has visited police stations, arrest facilities of the armed forces, customs stations, prisons for male and female adults and for young offenders, psychiatric hospitals and wings for forensic care, youth care homes, facilities for detention pending deportation, and it has accompanied return flights. In 2014 the Joint Commission plans tackling the issue of care homes for the elderly.

32. In view of the fact that visiting programmes of previous years had been conceived to comprise a variety of different types of facilities, the National Agency decided in 2013 to adopt topics of special interest. The first topic being measures affecting foreigners; it primarily visited facilities for prisoners pending deportation and monitored return flights during that year. However, other types of facilities such as prisons, police stations, army barracks and a detention facility for juvenile offenders were also visited.

33. According to its internal rules, the National Agency establishes a provisional list of places to visit for each year.

34. In view of its limited resources, the National Agency is also in contact with conferences of ministerial departments in order to achieve that its recommendations be implemented not only in one facility but in the broadest possible way across the entire country. It is also engaged in discussions with these conferences on the determination of standards for different types of places of detention.

35. With reference to the recommendation of the SPT contained in paragraph 52 of the SPT visit report, members of larger visiting teams already allocate specific tasks to its members such as who introduces the visit to the facility's authorities, who interviews detainees or who reviews detainee files. The National Agency will examine whether it is required to further formalize the distribution of tasks. Already now, based on the type of facility, the information gathered in preparation of the visit and the aim pursued, the National Agency may focus its visit on specific issues, such as detention of foreigners. Despite its limited resources, the National Agency will examine how to best ensure that more visits be accompanied by specialists such as medical doctors.

36. With reference to the recommendation of the SPT contained in paragraph 54 of the SPT visit report, see replies under recommendation contained in paragraph 14 of the visit report, above.

37. With reference to the recommendation of the SPT contained in paragraph 56 of the SPT visit report, guidelines for visits to different types of facilities already exist. Similar guidelines are being prepared for new types of facilities. Existing guidelines are continuously updated according to experiences during visits. Guidelines on specific issues that may arise during visits, such as interviews, may also be established over time.

38. Not all questions on the existing checklists apply to all types of facilities. A large prison may; for instance, pose more questions than a small one. It may only become clear during the visit that entire sections of the checklists will not be answered simply because the underlying situation is not given in the specific facility.

39. The National Agency has until now always received all the information it required during visits. While it usually receives many documents during the visit, others are sent by the facility within a time limit set by the Agency.

40. With reference to the recommendation of the SPT contained in paragraph 58 of the SPT visit report, the National Agency endeavours to create a trustful atmosphere with the persons it meets during its visits. This requires more or less previous information about the Agency and the character of the interview depending on the person's background and level of knowledge about German public administration.

41. The information leaflet has been reviewed and will be republished also in a version for detainees when introducing the National Agency's new corporate identity.

42. In the scope of the National Agency's new corporate identity, the information leaflet will be updated and translated into different languages. See hereon No. 35, above.

43. With reference to the recommendation of the SPT contained in paragraph 60 of the SPT visit report, interviews are generally conducted in a private setting, e.g. in inmate cells. The National Agency pays attention to ensuring that interviews cannot be overheard by staff. Health conditions and access to health professionals by detainees have been included into the list of questions to be typically asked during an interview.

44. With reference to the recommendation of the SPT contained in paragraph 62 of the SPT visit report, the National Agency has a variety of measuring equipment such as devices to measure room volume and surfaces, air quality or temperature. It makes use of these instruments only when given reason to believe that minimum standards are not met.

45. With reference to the recommendation of the SPT contained in paragraph 64 of the SPT visit report, the time the visiting teams dedicate to reviewing files and talking to detainees depends on the circumstances of each visit, such as the size of the visiting team and the complexity of the facility. Whenever possible and appropriate, it splits up visiting teams to do different tasks in parallel, as it did during the visit to the prison in Mannheim with the SPT. On one occasion in the past, the Federal Agency had to recommend that files be kept on site.

46. With reference to the recommendation of the SPT contained in paragraph 66 of the SPT visit report, the National Agency generally does not investigate individual complaints. Where suitable, complainants are directed to the competent authorities. Only in particularly grave situations does the National Agency inform the authorities or request a statement. As long as no imminent risk is at stake (e.g. in case of suicide threats or announced attacks on staff or other prisoners), this exclusively happens with prior agreement by the affected person. However; during interviews with the prisoners the National Agency should be made aware of complaints, it may, on a case-by-case basis, decide to bring these complaints to the knowledge of the facility's authorities.

47. With reference to the recommendation of the SPT contained in paragraph 68 of the SPT visit report, interviewees are usually provided with an information leaflet that contains the address of the National Agency. In the scope of the redesign of the National Agency's public appearance due in 2014, this leaflet will be translated into more languages and contain the information that every person may contact the National Agency without censorship concerning his or another person's situation.

48. Until now, there have been no reports that persons had been subjected to sanctions or prejudiced in other ways after having spoken to the National Agency. Not even hints to such risks have been purported in postal communication with prisoners after visits. It would hence appear exaggerated to explicitly advise staff not to mistreat persons who have spoken to the National Agency, given that all wardens are aware of the implications of such behaviour. As long as there are no signs indicating conflicts between inmates who have provided the National Agency with information and staff, a warning such as this would unnecessarily provoke resistance among staff to implement the Agency's recommendations

and to work towards a good relationship with prisoners. Nevertheless, this information is included in the future leaflet.

49. With reference to the recommendation of the SPT contained in paragraph 70 of the SPT visit report, reports already follow the recommended pattern. According to its new internal rules, the National Agency will publish visiting reports on its website as soon as the Government's statement has been received.

50. With reference to the recommendation of the SPT contained in paragraph 72 of the SPT visit report, despite its limited resources, the National Agency has conducted follow-up visits in those cases where it was confronted with particularly difficult situations in facilities. Where it recommended measures on shortcomings and later found that same shortcoming yet again in another facility depending from the same supreme authority, it made reference to its former recommendation and repeated it in a sharper tone; in one case even made a circumstance public.